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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

SUPERIOR COURT

OIL AND GREASE ON  
WHEELS, INC.

v.

MEDICARE SUPPLY CO.  
OF NEW ENGLAND, D/B/A  
UNITED SURGICAL CENTERS

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C.A. No. 96-1789

**DECISION**

**SILVERSTEIN, J.** Before the Court is an offer by University Surgical Associates, Inc. (USA) to purchase Medicare Supply Co. of New England's, d/b/a United Surgical Centers (Medicare), interest in Clinical IV Network, LLC (LLC), for \$50,000.00, and USA's motion to direct the receiver of Medicare to accept its offer to purchase Medicare's membership interest in the LLC. Also before the Court is a motion by USA for an order declaring the rights of the parties with respect to that interest.

**Facts and Travel**

The two companies involved in this action, USA and Medicare, are members of the LLC, a Rhode Island Limited Liability Company formed on June 30, 1993. The original three members of the LLC were RIH Surgery Foundation, Inc. (now USA), Clinical IV Network, Ltd. (a different entity than the LLC), and Margaret F. Quinn. As of December 30, 1994, Clinical IV Network, Ltd.'s member interest in the LLC was transferred to the Clinical IV Network Liquidating Trust (Trust). Pursuant to a

reconstitution agreement (Agreement) executed August 28, 1995 by the LLC's members, the Trust transferred and assigned its member interest in the LLC to Medicare and VNA Technicare, Inc., thus making Medicare and VNA Technicare, Inc. substitute members of the LLC.

On April 10, 1996, upon a petition by a corporation known as Oil and Grease on Wheels, Inc., a justice of the Superior Court appointed a temporary receiver of Medicare. On May 7, 1996, a permanent receiver of Medicare was appointed. Subsequently, the LLC bought out VNA Technicare's member interest, leaving Medicare and USA as the only members of the LLC.

On May 27, 1999, USA filed this \$50,000.00 offer for the purchase of Medicare's member interest in the LLC. Medicare's receiver objects to the offer, arguing that the amount offered is not in the best interest of the receivership estate of Medicare.

### **Discussion**

The receiver argues that the amount offered is not in the best interest of the estate, and that the Court should force USA to buyout Medicare's member interest in the LLC, pursuant to the Agreement. The receiver values Medicare's interest in the LLC at approximately \$309,082.00.<sup>1</sup>

USA argues that the receiver is not entitled to a buyout because the Agreement's buyout provisions are available only to a member of the LLC who has become dissociated due to an event of dissociation. According to the terms of the Agreement, an event of dissociation occurs when there has been:

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<sup>1</sup> The basis of this valuation is as follows: Under the Agreement, the Clinical IV Network Liquidating Trust has a 59% interest in the LLC for liquidation purposes, and Medicare has a 40.7% interest in the Trust. According to the LLC's latest financial statement, released on December 31, 1995, the net book value of its members' interest was \$1,287,148.00. (40.7% of 59% of \$1,287.148.00 equals \$309,082.00.)

(e) change in control of the member other than: (i) a change in control resulting from the death of a stockholder of the member; (ii) rotation of members of a nonprofit corporation occurring in the ordinary course of its affairs; or (iii) if Medicare is a member then either (A) the sale of stock by one stockholder of Medicare to another or (B) the redemption or purchase by Medicare of any of its own stock; or (f) dissolution. Agreement § 8.01(e) and (f).

USA argues that there has been no event of dissociation, as defined in § 8.01(e) and (f). First, there has not yet been a dissolution of Medicare (§8.01(f)). Second, control of Medicare has not changed (§8.01(e)). USA points out in its argument that "control" is a term of art under the Agreement. On page 3 of the Agreement, control is defined as: "(i) an ownership, partnership or stock interest in a Person when such interest is sufficient in all circumstances to carry any motion; (ii) the right to elect or appoint, directly or indirectly, a number of trustees, directors or managers of a Person sufficient in all circumstances to carry any motion before the Controlled Person; or (iii) the right to manage a Person pursuant to a management or similar agreement."

USA contends that the appointment of the receiver did not effectuate a change in control because the receiver obtained no ownership or stock interest in Medicare, no right to appoint directors, and no right to manage Medicare. Instead, USA contends that Medicare's member interest was transferred to the receiver, thus making the receiver a permitted assignee of Medicare's interest. Medicare is permitted to transfer its interest under § 7.01(b) of the Agreement.

Section 7.02 addresses the rights of assignees of membership interest in the LLC pursuant to § 7.01(b). Under § 7.02, an assignee of a member's interest in the LLC does not become a member of the LLC with full membership rights, unless certain conditions (not here applicable) have occurred.<sup>2</sup>

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<sup>2</sup> See § 7.02 (b)(i)-(v) for a list of the conditions that must be met for a permitted assignee to become a substitute member.

Further, section 7.03 of the Agreement defines the rights of permitted assignees. Under § 7.03, assignees' rights are limited to receiving distributions from the LLC. Therefore, USA argues, because the receiver is a permitted assignee, his rights here are only to receive distributions from the LLC.

Furthermore, USA argues that the relationship a receiver has with an limited liability company member is analogous to the relationship a judgment creditor has with the member of a limited liability company. Therefore, USA contends, the rights of the receiver are also analogous to the rights of a judgment creditor. Under the Rhode Island LLC Act,<sup>3</sup> a judgment creditor has only the rights of an assignee of a member's interest in a limited liability company,<sup>4</sup> which under the Agreement is only to receive the distributions that the assignor would be entitled to receive. Agreement at § 7.03. Therefore, USA asserts that the receiver is an assignee of Medicare's member interest in the LLC.

The receiver argues that his appointment was an event of dissociation, as defined in § 8.01 of the Agreement, and not an assignment. The receiver argues that his appointment constituted a change in control of Medicare. The receiver contends that control, as defined in the operating agreement, was changed because it was no longer in the hands of the shareholders, Officers, and Board of Directors of Medicare. After the appointment, those parties no longer had "interests sufficient in all circumstances to carry any motion, or the right to elect or appoint trustees, directors or managers, or the right to manage [Medicare]." See Agreement at 3.

### **Change of Control**

Control of a member of the LLC is defined in the Agreement as:

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<sup>3</sup> G.L. 1956 § 7-16-1 et seq.

<sup>4</sup> G.L. 1956 § 7-16-35(a)(3) and 37.

(i) "an ownership, partnership or stock interest in a Person when such interest is sufficient in all circumstances to carry any motion; (ii) the right to elect or appoint, directly or indirectly, a number of trustees, directors or managers of a Person sufficient in all circumstances to carry any motion before the Controlled Person; or (iii) the right to manage a Person pursuant to a management or similar agreement." Agreement at page 3.

Control of Medicare has changed, even though the receiver does not have ownership or stock interest in Medicare, the right to appoint directors, or the right to manage Medicare pursuant to an agreement. Control has changed because the parties that did have these powers -- the shareholders, officers, and board of directors -- no longer have a sufficient interest in Medicare in all situations to carry any motion before Medicare; no longer have the right to elect or appoint directors or managers; and no longer have the right to manage Medicare. These powers were lost when the Superior Court appointed a receiver to handle the liquidation of the company.<sup>5</sup>

The crux of this matter rests upon the definition of change. Change is defined as "the action of making something different in form, quality, or state. . . ." Webster's Third New International Dictionary 374 (1971). A shift in control from one group of parties to another party is not necessary for change to occur. This Court disagrees with USA's argument that in order for a change of control to occur, the receiver must gain control of Medicare.

A change of control of Medicare has occurred because the shareholders, directors, and officers of the company no longer control Medicare. Pursuant to § 8.01(e) of the Agreement, change of control in a member of the LLC creates an event of dissociation in that member. Therefore, an event of dissociation at Medicare has occurred.

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<sup>5</sup>See also G.L. § 7-1.1-91, which grants the court jurisdiction and power to appoint receivers for a corporation.

### **Receiver as Assignee**

While this Court disagrees with USA's assertion that the relationship the receiver has with Medicare is analogous to one that a judgment creditor would have to a member of an LLC, the Court does find that the receiver has the status of a lien creditor. Under the Uniform Commercial Code, G.L. 1956 § 6A-9-301(3), a receiver in equity ordinarily has the status of a lien creditor. E. Turgeon Construction Co., Inc. v. Elhatton Plumbing & Heating Co., Inc., 292 A.2d 230, 232, 110 R.I. 303, 306 (R.I. 1972); see also Gordon v. Clifford Metal Sales Co., Inc. 602 A.2d 535, 537 (R.I. 1992).

The R.I. Limited Liability Company Act does not address the rights of lien creditors, as it does with the rights of judgment creditors. However, in Rhode Island, a receiver "succeeds only to the debtor's rights, and takes the property subject to the claims, liens and equities which would affect the debtor if [it itself] were asserting his interest in the property." Vitterito v. Sportsman's Lodge & Restaurant, Inc., 228 A.2d 119, 124-125, 102 R.I. 72, 80 (R.I. 1967).

As a result, the receiver here is not to be treated as an assignee under the terms of the Agreement, but as a party with the status of a lien creditor, succeeding only to Medicare's rights, and taking Medicare's property subject to the claims, liens and equities which would affect Medicare. These rights include the rights Medicare has as a dissociated member of the LLC under Article VIII of the Agreement.

### **Conclusion**

Accordingly not because of the receiver's status but because control of Medicare has changed, and because the receiver is not an assignee of Medicare's membership interest in the LLC, this Court finds that an event of dissociation under the terms of the Agreement has occurred. Section 8.03 of the Agreement provides that upon dissociation of a member of the LLC, the dissociated member shall sell and the LLC shall purchase the dissociated member's interest. Medicare's membership interest in the LLC is \$309,082.00. Therefore, this Court directs USA, to purchase Medicare's membership interest in the LLC for \$309,082.00.

Counsel shall prepare an appropriate order for entry.